



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/312,992	05/17/99	JOHNSTON	S

SCOTT E JOHNSTON  
16857 HUMMINGBIRD LANE  
COTTONWOOD CA 96022

QM02/1107

EXAMINER

HOOK, J

ART UNIT

PAPER NUMBER

3752

DATE MAILED: 11/07/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/312,992**

Applicant(s)

**Johnston**

Examiner  
**James F. Hook**

Group Art Unit  
**3752**



☒ Responsive to communication(s) filed on Aug 1, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-9 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-9 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3752

## DETAILED ACTION

### *Specification*

1. Due to the fact that the new abstract was not provided on a separate sheet with the amendment filed August 1, 2000, the new abstract has not been added to the specification. A new copy of the abstract on a separate sheet of paper should be provided in the next response.

Therefore the same objection to the specification exists and is recited below.

The abstract of the disclosure is objected to because it contains two paragraphs which is improper when only a single paragraph is acceptable. Correction is required. See MPEP § 608.01(b).

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by the Handbook of Steel Drainage. The reference to the Handbook of Steel Drainage discloses the recited spiral formed pipe comprising an elongated strip formed of ductile material such as sheet metal formed

Art Unit: 3752

into adjacent helical convolutions, with a corrugated wall portion, seams which can be either lock seams or welded, where the dimensional proportions are increased along with pipe size, and where it is noted that conventional pipes of this type are capable of ranging in diameters from 6 inches to 21 feet in diameter, and can be formed into arch shapes of large diameters too as seen on page number 38.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Holcomb. The patent to Holcomb discloses the recited spiral formed pipe comprising an elongated strip formed of ductile material such as sheet metal formed into adjacent helical convolutions, with a corrugated wall portion 26, seams which can be either lock seams or welded, where the dimensional proportions are increased along with pipe size, and where it is taught that conventional pipes of this type are capable of ranging in diameters from 6 inches to 21 feet in diameter and it is implied that the pipe in Holcomb is made following these standards, and therefore it is believed that the pipe of Holcomb can also be made up to those

Art Unit: 3752

dimensions if such were needed, where the dimensions are not considered limited by the examples tested in Holcomb.

6. Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holcomb in view of the Handbook of Steel Drainage. The patent to Holcomb discloses all of the recited structure with the exception of reshaping the tube as an arch. The reference to Handbook of Steel Drainage discloses the recited convoluted pipe formed of a ductile metal material can be made from tubes having large diameters which are either rounded in shape or can be formed in arch shapes, that such can be formed of the same types of pipes including seam welded and lock seamed pipes. It would have been obvious to one skilled in the art to modify the shape of the pipe in Holcomb to be reshaped into an arch shape to provide a different profile which can be stronger as suggested by Handbook of Steel Drainage.

### ***Response to Arguments***

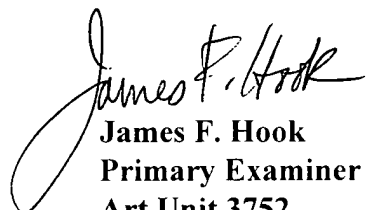
7. Applicant's arguments filed August 1, 2000 have been fully considered but they are not persuasive. The argument that Holcomb teaches only making the pipe in certain ranges is not considered persuasive since it is taught in Holcomb that the pipes disclosed therein can be made following the standards set in the Handbook of Steel Drainage, and therefor it is taught that the sizes of known pipes can be up to large diameters including up to 21 feet. The fact that Holcomb only tested pipes up to a certain sized and disclosed those results does not mean it is not obvious

Art Unit: 3752

to make the pipe of larger diameters if needed, and that such is old and well known as taught by the Handbook that sizes can range up to 21 feet.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Hook whose telephone number is (703) 308-2913.

J. Hook  
November 6, 2000

  
**James F. Hook**  
**Primary Examiner**  
**Art Unit 3752**